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In re Application of
Dearnaley, Geoffrey, et al.
U.S. Application No.: 09/509,849
PCT No.: PCT/US98/18938
International Filing Date: 11 September 1998
Priority Date: 11 September 1997
Attorney's Docket No.: GORE/MI/PCT/US
For: A METHOD OF DEPOSITING AN
ELECTROCATALYST AND ELECTRODES
FORMED BY SUCH METHOD

DECISION ON PETITION
TO REVIVE ABANDONED
APPLICATION UNDER 37
CFR 1.137(b)

This decision is issued in response to applicants' "Petition For Revival Of An International Application For Patent Designating The U.S. Abandoned Unintentionally Under 37 CFR 1.137(b)" filed on 03 April 2000. Applicant has paid the required petition fee.

BACKGROUND

On 11 September 1998, applicants filed international application PCT/US98/18938 which claimed a priority date of 11 September 1997 and which designated the United States.

On 09 April 1999, a Demand was filed with the International Preliminary Examining Authority electing the United States. The election was made prior to the expiration of 19 months from the priority date. As a result, the deadline for submission of a copy of the international application (unless previously communicated by the International Bureau) and payment of the basic national fee was extended to expire 30 months from the priority date, i.e., 13 March 2000 (11 March 2000 was a Saturday).

On 03 April 2000, applicant filed the Petition For Revival considered herein, with accompanying materials.

DISCUSSION

37 CFR 1.137(b) permits the filing of a petition to revive an abandoned application where the abandonment resulted from an unintentional delay. A grantable petition under this section must include: (1) the required reply, unless previously filed; (2) the petition fee required by law; (3) a statement that the "entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to this paragraph was unintentional;" and (4) any terminal disclaimer and fee required pursuant to 37 CFR 1.137(c).

Regarding item (1), the "required reply," section 711.03(c), page 700-93 of the Manual of Patent Examining Procedures states that:

[g]enerally, the required reply is the reply sufficient to have avoided abandonment, had such reply been timely filed.

Here, a copy of the international application was not required because the international application had been filed in the United States Receiving Office. Thus, the "required reply" was the basic national fee. The Petition For Revival Applicant was accompanied by a check which included \$670 for the basic national fee. Applicants have therefore made a submission which would have been "sufficient to have avoided abandonment" had it been made in a timely manner, that is, on or before 13 March 2000. Accordingly, applicants have submitted the "required reply." Item (1) is satisfied.

Item (2) is the petition fee required under 37 CFR 1.17(m). The Petition For Revival was accompanied by a check for the petition fee. Item (2) is satisfied.

As for item (3), the Petition For Revival expressly states that '[t]he entire delay in filing the required reply from the due date for the required reply until the filing of a grantable petition under 37 CFR 1.137(b) was unintentional.' Item (3) under 37 CFR 1.137(b) is satisfied.

Under the terms of 37 CFR 1.137(c), the terminal disclaimer listed as item (4) above is not required for this application. Applicants have therefore satisfied all the requirements for a grantable petition under 37 CFR 1.137(b). The Petition For Revival is granted.

CONCLUSION

Applicants' Petition For Revival is **GRANTED**.

This application is being forwarded to the National Stage Processing Branch of the International Division for further processing in accord with this decision.



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